

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #5	CCRB Case #: 201803964	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/15/2018 4:12 PM	Location of Incident: [REDACTED]	Precinct: 46	18 Mo. SOL 11/15/2019	EO SOL 11/15/2019	
Date/Time CV Reported Fri, 05/18/2018 7:05 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 05/18/2018 7:05 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Yefersson Salasmartinez	15419	957123	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Richard Barcia	13255	961635	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Yefersson Salasmartinez	Force: Police Officer Yefersson Salasmartinez used a Taser against § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Yefersson Salasmartinez	Abuse: Police Officer Yefersson Salasmartinez threatened § 87(2)(b) [REDACTED] with the use of force.	[REDACTED]

Case Summary

This complaint was filed by § 87(2)(b) on May 18, 2018, at the CCRB by phone.

On May 15, 2018, at approximately 4:12 p.m., § 87(2)(b) was driving in the vicinity of § 87(2)(b) in the Bronx. § 87(2)(b)'s vehicle was stopped by Police Officer Yefferson Salasmartinez and Police Officer Richard Barcia from the 46th Precinct. PO Salasmartinez used a Taser against § 87(2)(b) (**Allegation A: Force**, § 87(2)(g)). PO Salasmartinez threatened § 87(2)(b) with the use of force (**Allegation B: Abuse of Authority**, § 87(2)(g)).

§ 87(2)(b) was arrested and summonsed as a result of this incident.

Surveillance video of the incident was obtained from the Patrol Borough Bronx investigations unit which has a concurrent investigation about the same incident (BR01-02).

This case was added to the sensitive case list due to media coverage of the incident. The incident received coverage from the NY Daily News, ABC7 News, Pix 11 News, and Bronx Channel 12 News.

Findings and Recommendations

Allegation A – Force: Police Officer Yefferson Salasmartinez used a Taser against § 87(2)(b)

Allegation B – Abuse of Authority: Police Officer Yefferson Salasmartinez threatened § 87(2)(b) with the use of force.

It is undisputed that § 87(2)(b)'s vehicle was stopped by PO Salasmartinez and PO Barcia. § 87(2)(b) refused to provide his identification to PO Salasmartinez after being asked for this information more than once. PO Salasmartinez asked § 87(2)(b) to exit his vehicle and he did not immediately do so. PO Salasmartinez used a Taser against § 87(2)(b). § 87(2)(b) was taken into custody without further incident.

§ 87(2)(b) testified that he was driving, noticed a police vehicle behind him with lights and sirens activated, and attempted to let the vehicle pass him twice but it did not do so (BR03). § 87(2)(b) pulled over in front of a fire hydrant. PO Salasmartinez and PO Barcia approached him. PO Salasmartinez asked § 87(2)(b) for his identification. § 87(2)(b) did not provide his ID, asserted he did nothing wrong and asked why he had to provide his ID. PO Salasmartinez asked § 87(2)(b) to exit the vehicle. § 87(2)(b) picked up his phone from the center console with his right hand and started to call his father. PO Salasmartinez pulled on § 87(2)(b)'s left arm and § 87(2)(b) yanked it away. PO Salasmartinez took out his Taser and told § 87(2)(b) to get out of the car again. § 87(2)(b) opened his car door. § 87(2)(b) started to exit but got stuck because of his seatbelt. § 87(2)(b) turned to his right and reached with his left hand to unbuckle his seatbelt. Immediately, after turning his body, PO Salasmartinez used a Taser against § 87(2)(b). PO Salasmartinez said, "Do you want another round of Taser?"

Surveillance video from a building across the street was obtained from Patrol Borough Bronx Investigations and a clip is embedded below (BR12). Based on a hardcoded timestamp on the video, approximately 90 seconds passes from when the officers approach § 87(2)(b)'s vehicle to when he is removed from the vehicle. PO Salasmartinez, seen on the right, takes out his Taser at approximately 4:07:45. The door is opened at 4:07:52. PO Salasmartinez moves toward the interior and quickly takes a step back. PO Barcia is behind PO Salasmartinez. PO Salasmartinez moves toward of the interior of the vehicle again at 4:08:10. § 87(2)(b) exits the vehicle at 4:08:19. The precise moment when PO Salasmartinez used a Taser against § 87(2)(b) cannot be discerned in the footage. The footage does not capture § 87(2)(b)'s movements inside the vehicle.



201803964_20181018_1611_DM.mp4

§ 87(2)(b), was identified as a witness to this incident. § 87(2)(b) observed the officers cut off § 87(2)(b)'s vehicle (BR04). The officers approached the vehicle and words were exchanged with § 87(2)(b). However, § 87(2)(b) could only hear § 87(2)(b) because he was yelling and repeatedly asking the reason for the stop. An officer opened the driver's side door and stepped toward the driver but § 87(2)(b) could not see what was happening inside the vehicle. § 87(2)(b) remembered that people were yelling but she did not remember specifically who was talking or what they were saying. After a few seconds § 87(2)(b) heard something pop and saw that § 87(2)(b) was removed with wires hanging off of him. § 87(2)(b) did not hear any officer say anything to the effect of, "Do you want another round?" after § 87(2)(b) was Tasered.

PO Salasmartinez and PO Barcia provided the following generally consistent testimony about the incident (BR05-06). While on patrol in their police vehicle, they received a radio run regarding an order of protection violation. While en route to this location, the officers came to be behind § 87(2)(b)'s vehicle. § 87(2)(b) failed to yield to the police vehicle. After turning onto Popham Avenue, § 87(2)(b) continued to prevent the officers from passing his vehicle, and they decided to stop him.

PO Salasmartinez testified that § 87(2)(b) refused numerous verbal commands to exit his vehicle. PO Salasmartinez warned § 87(2)(b) that if he did not exit then he would have to take him out. § 87(2)(b) said, "Just take me out." PO Salasmartinez tried to unlock the door and § 87(2)(b) pushed his hands away from the lock with his left hand. PO Salasmartinez took out his Taser and warned § 87(2)(b) not to do that again. PO Salasmartinez opened the door and § 87(2)(b) made no attempt to get out of the car and did not verbally indicate he was going to comply. PO Salasmartinez grabbed § 87(2)(b)'s left arm and told him not to move. § 87(2)(b) started reaching toward the center console with his right hand. PO Salasmartinez reached for § 87(2)(b)'s right arm because he did not know if he was reaching for something or was going to put the car in drive. § 87(2)(b) pushed PO Salasmartinez' hands away. § 87(2)(b) clenched his fists and raised them in front of him. PO Salasmartinez discharged his Taser because he believed at that moment that § 87(2)(b) was going to punch him and he feared § 87(2)(b) would shift his car into gear. PO Salasmartinez did not recall telling § 87(2)(b) "Do you want another round?" and he did not recall threatening to use the Taser against him again.

PO Barcia testified that § 87(2)(b)'s left arm was outside his window and he was moving it up and down while refusing to provide his identification. PO Salasmartinez opened the door to the car after repeated attempts to get § 87(2)(b)'s identification. PO Salasmartinez told § 87(2)(b) to exit repeatedly, but § 87(2)(b) continued to protest verbally. PO Barcia did not recall if § 87(2)(b) was making any movements after PO Salasmartinez opened the door, was reaching for anything, or if PO Salasmartinez made any attempt to physically remove § 87(2)(b) from the vehicle. PO Barcia did not recall where he was positioned when the door was opened. PO Barcia did not see PO Salasmartinez use a Taser against § 87(2)(b) but knew this occurred because he heard the Taser being discharged. § 87(2)(b) was removed from the vehicle without incident. PO Barcia did not recall if PO Salasmartinez said, "Do you want another around?" or if he said anything to § 87(2)(b) after he Tasered him.

A conducted electrical weapon (CEW) should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons actually present. Active resistance includes physically evasive movements to defeat a member of the services' attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into custody. Active aggression consists of a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. NYPD Patrol Guide, Procedure 221-08 (BR07).

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. NYPD Patrol Guide, Procedure 221-01 (BR08).

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint filed by § 87(2)(b) (BR09).
- PO Salasmartinez has been a member of the service for four years, has no substantiated allegations, § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation.
- The NYC Comptroller's Office responded to a request on September 7, 2018 indicating that no notice of claim was filed about this incident (BR10).
- § 87(2)(b) has no history of any criminal convictions in NYC (BR11). As of November 11, 2018, OCA revealed no record for the case resulting from § 87(2)(b)'s arrest (BR13).

Squad No.: 5

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date